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JUL 24 1972

IN THE

Supreme Court of the United States

1971 TERM

WILLIAM HENRY FURMAN v. GEORGIA	No. 69-5003
LUCIOUS JACKSON, JR. v. GEORGIA	No. 69-5030
A. C. PARK v. THE STATE OF GEORGIA	No. 69-3 (Formerly No. 809, October Term, 1969).
JOHNNIE B. WILLIAMS v. STATE OF GEORGIA	No. 69-5049 (Formerly No. 2383, Misc., October Term, 1969).
WILLIE ARKWRIGHT, v. STATE OF GEORGIA	No. 69-5032 (Formerly No. 1953, Misc., October Term, 1969).
WILLIAM JACK MILLER v. STATE OF GEORGIA	No. 70-5065 (Formerly No. 6569, October Term, 1970).
UNITED STATES OF AMERICA, ex rel. VENSON EUGENE WILLIAMS v. LAMONT SMITH (Formerly A. L. Dutton), Warden, Georgia State Prison	No. 70-5066 (Formerly No. 6570, October Term, 1970).
TOMMIE LEE HENDERSON v. STATE OF GEORGIA	No. 70-5079 (Formerly No. 6733, October Term, 1970).
JULIOUS SULLIVAN v. THE STATE OF GEORGIA	No. 69-5006 (Formerly No. 825, Misc., October Term, 1969).
JAMES C. THACKER v. THE STATE OF GEORGIA	No. 69-5045 (Formerly No. 5331, October Term, 1970).

GEORGE CUMMINGS v. STATE OF GEORGIA	No. 69-5027 (Formerly No. 683, Misc., October Term, 1969).
JAMES C. LEE, alias MOSES KING, JR. v. THE STATE OF GEORGIA	No. 69-5039 (Formerly No. 5256, October Term, 1970).
JAMES HENRY WALKER, v. THE STATE OF GEORGIA	No. 70-3 (Formerly No. 429, October Term, 1970).

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

MOTION TO STAY ISSUANCE OF JUDGMENTS AND MANDATES

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1971 TERM

WILLIAM HENRY FURMAN, *Petitioner,* v. GEORGIA, *Respondent.*	No. 69-5003
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MOTION TO STAY ISSUANCE OF JUDGMENTS AND MANDATES

To: The Honorable Lewis F. Powell, Jr.
Justice of the United States and
Circuit Justice for the Fifth Judicial Circuit:

Respondent, by its Attorney General, respectfully moves, pursuant to Rule 59, to stay the issuance of the judgments and mandates in the above-entitled causes, in which causes judgments and orders were entered on June 29, 1972, vacating the judgment of the lower court in each case insofar as it left undisturbed the death

penalty imposed and remanding the case, in each instance, for further proceedings. The following good cause is shown to justify a stay of the issuance of the judgments and mandates in the above-entitled causes, that will remain in effect at least until the Court reconvenes in October, 1972, and has had an opportunity to act further:

1.

If the stays are not granted, the sentences imposed will be incapable of being carried out and the lower courts will be confronted with fashioning extra-statutory procedures for the setting of new sentences, which will of necessity require further action and proceeding in the trial courts wherein the original sentences were imposed, all of which is further complicated by the dicotomy which exists between the murder cases, *i.e.* Furman, Park, Venson Williams, and Henderson (where the only alternative punishment is life imprisonment: Ga. Code Ann. § 26-1005; Criminal Code of Georgia § 26-1101), and the rape cases, *i.e.*, Jackson, Arkwright, Miller, and Johnnie Williams (where the alternative punishments are life imprisonment or labor in the penitentiary for a period of between one and twenty years: Ga. Code Ann. § 26-1302).

2.

Such a procedure would result in sentences less than death for these persons whose petitions were pending in the Supreme Court. Respondent has filed a Petition for Rehearing[1] in these cases which, if granted after the

[1]Copy is attached to the original hereof; copies were served on all counsel listed in the Certificate of Service attached hereto, before the Petition was filed.

Court reconvenes in October, would present cases in which the controversy has then become moot.

3.

At the same time, and in the event the stays are denied, the remainder of the over 30 sentences of death which remain unexecuted and unreversed in Georgia, would be subject to the non-finality of the Court's decision in the above-entitled causes due to the pendency of the Petition for Rehearing heretofore filed.

4.

Even if the denial of stays does not moot the question for which certiorari was granted in *Furman* and *Jackson*, the granting of the petition and any subsequent change or modification in the Court's primary decision would probably affect the extant death sentences which have *not* been before the Court. The result would be that some persons will have been subject to the decision as it stands today while others, similarly situated except for the happenstance of not having their cases pending before the Court on the date the decision was rendered, are subject to a later revised decision. Inconsistency of treatment would be the obvious effect.

5.

Granting the stays will not substantially affect the custody of petitioners, whose present incarceration would in all likelihood be continued after resentencing.

6.

Granting the stays will permit orderly and fair final adjudication of a question common to over 30 Georgia prisoners and avoid the singling out of only a few to

whom the current decision would apply. It will also allow the continued adjudication of the penalty in cases deemed appropriate by judges or juries in the interim. Thus, all persons subject to the penalty in Georgia would ultimately receive like treatment.

WHEREFORE, Respondent prays that this Motion be granted, in each and every cause styled above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dorothy T. Beasley, Attorney of record for the Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I served the foregoing "Motion to Stay Issuance of Judgments and Mandates" on the Petitioners by depositing copies of the same in a United States mailbox, with first class postage prepaid, addressed to counsel of record at their post office addresses:

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This ..... day of July, 1972.

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